

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CASSANDRA M. POWELL,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN,

14 Defendant.

CASE NO. C12-1039-JCC

ORDER ADOPTING THE REPORT
AND RECOMMENDATION

15 This matter comes before the Court on the Report and Recommendation of the Honorable
16 Mary Alice Theiler, United States Magistrate Judge (Dkt. No. 21), the Plaintiff's objections (Dkt.
17 No. 22), and the Defendant's response (Dkt. No. 23). Having thoroughly considered the parties'
18 briefing, the Report and Recommendation, and the relevant record, the Court hereby ADOPTS
19 the Report and Recommendation (Dkt. No. 15) for the reasons explained herein.

20 **I. BACKGROUND**

21 Plaintiff Cassandra M. Powell ("Plaintiff") filed applications for Supplemental Security
22 Income and Disability Insurance Benefits. (AR 24.) The Commissioner denied these claims
23 initially and on reconsideration. (*Id.*) An Administrative Law Judge ("ALJ") then held a hearing
24 on Plaintiff's claims. The ALJ found Plaintiff not disabled. (Dkt. No. 21 at 2.) Plaintiff timely
25 appealed that decision. (*Id.*) The Appeals Council denied her request for review, rendering the
26 ALJ's decision the final decision of the Commissioner. (AR 1-6.) Pursuant to 42 U.S.C. §

1 405(g), Plaintiff appealed this decision by filing a civil action in United States District Court.
 2 Plaintiff's complaint was referred to United States Magistrate Judge Mary Alice Theiler, (Dkt.
 3 No. 4), who issued a Report and Recommendation ("R&R"), (Dkt. No. 21). The R&R
 4 recommends that the ALJ's decision be affirmed. (*Id.* at 1.)

5 **II. DISCUSSION**

6 Plaintiff objects to the following recommendations of the R&R: (1) declining to consider
 7 Plaintiff's fourth assignment of error, because it disregarded the Court's scheduling order by
 8 failing to formulate a specific issue; (2) declining to consider the Plaintiff's first assignment of
 9 error, as outside of the Court's jurisdiction; and (3) determining that the ALJ made no error
 10 regarding the weight given to the opinion of Dr. Czysz. (Dkt. No. 22.) The Court reviews *de*
 11 *novo* any part of the R&R to which Plaintiff properly objected. Fed. R. Civ. P. 72(b)(3).

12 **A. Plaintiff's First Objection**

13 Plaintiff first objects to the R&R's determination that Plaintiff's fourth assignment of
 14 error, titled "The ALJ's Decision Is Not Supported by Substantial Evidence," was insufficient to
 15 invoke judicial review. (Dkt. No. 15 at 7.) While the Court agrees with the R&R that that
 16 section's overlong "narrative summary of medical evidence" may be insufficient to invoke
 17 judicial review, (Dkt. No. 21 at 5), the Court nevertheless considers the merits of that assignment
 18 of error.

19 The Court finds no merit, however, in Plaintiff's objection. Plaintiff details evidence that
 20 might support a favorable decision on Plaintiff's claim. (Dkt. No. 15 at 7–14.) The existence of
 21 evidence that might support a finding contrary to the ALJ's is not a basis for holding that the
 22 ALJ's conclusion was not supported by substantial evidence. *See Blakley v. Comm'r of Soc. Sec.*,
 23 581 F.3d 399, 406; *cf. Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) ("Where the
 24 evidence is susceptible to more than one rational interpretation, one of which supports the ALJ's
 25 decision, the ALJ's conclusion must be upheld."). Plaintiff specifically objects by stating that the
 26 post-hearing opinions of Drs. Cantrell and Suydam, which register disagreement with the ALJ's

1 finding that Plaintiff is capable of performing simple repetitive work, (AR 578–79, 585–86),
 2 undermine the conclusion that the ALJ’s decision is supported by substantial evidence, (Dkt. No.
 3 22 at 4.) Conclusory opinions sought for litigation purposes, however, may properly be rejected.
 4 *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005); *Saelee v. Chater*, 94 F.3d 520,
 5 522–23 (9th Cir. 1996). Although both physicians reach a different conclusion from the ALJ,
 6 their clinical evaluations are consistent with the ALJ’s assessment of Plaintiff’s residual
 7 functional capacity. (*Compare* AR 27–28, *with id.* at 581–84, 588–89). Because the ALJ’s
 8 conclusion that Plaintiff is not disabled is supported by substantial evidence, that conclusion is
 9 affirmed. 

10 **B. Plaintiff’s Second and Third Objections**

11 Plaintiff objects to the R&R’s decision not to review the Appeals Council’s denial of
 12 review of Plaintiff’s claim. (Dkt. No. 22 at 5). This Court has no jurisdiction to review an
 13 Appeals Council decision to deny review. *Taylor v. Comm’r of Soc. Sec. Admin.*, 659 F.3d 1228,
 14 1231 (9th Cir. 2011). Evidence submitted for the first time before the Appeals Council does
 15 become part of the record that the district court reviews to determine whether substantial
 16 evidence supports the ALJ’s finding. *See Brewes v. Comm’r of Soc. Sec. Admin.*, 659 F.3d 1157,
 17 1159 (9th Cir. 2012). The Appeals Council fulfilled its duty to consider Plaintiff’s new evidence.
 18 (AR 1–2); 20 C.F.R. § 404.970(b). Whether or not Plaintiff directed her initial assignment of
 19 error at the Appeals Council or the Commissioner is immaterial, because this Court—after
 20 considering the entire record, including the evidence first submitted to the Appeals Council—has
 21 determined that substantial evidence supports the ALJ’s finding.

22 Finally, Plaintiff objects to the R&R’s thoroughly supported conclusion that the ALJ did
 23 not err in giving little weight to the opinion of Dr. Czysz, because his report was based on
 24 Plaintiff’s self-report. (Dkt. No. 22 at 5–6.) The ALJ may disregard the opinion of a physician
 25 when it is premised on subjective complaints of a less-than-credible claimant. *Tonapetyan v.*
 26 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). Dr. Czysz’s opinion relied heavily on Plaintiff’s

1 self-report, which the ALJ had deemed to be only partially credible. (AR 32.) The fact that Dr.
2 Czysz observed some symptoms, already accounted for in the ALJ's decision, (AR 26–28), does
3 not transform the ALJ's conclusion into a harmful error, *see Molina v. Astrue*, 674 F.3d 1104,
4 1115 (9th Cir. 2012).

5 **III. CONCLUSION**

6 Therefore, after careful consideration of the parties' briefing, the Report and
7 Recommendation, and the relevant record, the Court does hereby find and ORDER:

- 8 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. No. 21).
- 9 (2) The Commissioner's decision is **AFFIRMED**.
- 10 (3) The Clerk of the Court is directed to send copies of this Order to the parties and to
11 the Magistrate Judge Mary Alice Theiler.

12 DATED this 14th day of June.
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John C. Coughenour
UNITED STATES DISTRICT JUDGE